

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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| JUDITH MILLER |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket Nos. 196,886 & 202,639 |
| HCA WESLEY MEDICAL CENTER |) | |
| Respondent |) | |
| Self-Insured |) | |

ORDER

Claimant appealed the Award dated July 29, 1998, entered by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument in Wichita, Kansas, on February 12, 1999.

APPEARANCES

Randy S. Stalcup of Wichita, Kansas, appeared for the claimant. P. Kelly Donley of Wichita, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant developed bilateral carpal tunnel syndrome while working for the respondent. Docket No. 196,886 is a claim for those injuries with an agreed accident date of September 30, 1994. Docket No. 202,639 is a claim for a back injury that occurred on March 29, 1995.

The Judge averaged functional impairment ratings for the upper extremities provided by Drs. Lucas and Zimmerman and concluded that claimant had an 11.5 percent whole body functional impairment upon which the Judge awarded permanent partial general disability benefits. In the back injury claim, the Judge concluded that the opinions of Drs. Sparks and Mills were more persuasive than that of Dr. Zimmerman and, after

deducting an amount for preexisting impairment, awarded claimant a 2 percent permanent partial general disability.

Claimant contends Dr. Zimmerman is more experienced than Dr. Lucas in assessing functional impairment and, therefore, the Judge erred by failing to base claimant's award for the upper extremity injuries on Dr. Zimmerman's rating alone. In the back injury claim, claimant contends the Judge erred by not factoring in Dr. Zimmerman's ratings in determining the functional impairment.

The only issue before the Appeals Board in each claim is the nature and extent of disability.

Docket No. 196,886

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

- (1) Ms. Miller developed bilateral carpal tunnel syndrome while working for Wesley Medical Center. For purposes of this claim, the parties stipulated that September 30, 1994, was the appropriate date of accident.
- (2) In May 1995, board certified orthopedic surgeon Dr. George L. Lucas operated on Ms. Miller's right wrist and decompressed both the median and ulnar nerves. In September 1995, the doctor performed the same surgery on the left wrist. Because of continuing symptoms, the doctor later reoperated on the left wrist in May 1996.
- (3) Because Ms. Miller has returned to work for the respondent, she claims permanent partial general disability benefits for her functional impairment rating only.
- (4) Using what the Judge believed to be the whole body functional impairment ratings provided by Dr. Lucas and Ms. Miller's medical expert, Dr. Daniel D. Zimmerman, the Judge averaged 9 percent and 14 percent and found that Ms. Miller had sustained an 11.5 percent whole body functional impairment due to the upper extremity injuries. The Appeals Board does not disagree with that analysis. Had the 14 percent rating also included the impairment for the right upper extremity, the Appeals Board would affirm the Judge's finding. But Dr. Zimmerman's 14 percent rating only pertained to the left upper extremity.
- (5) Using the combined value charts contained in the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised), the Appeals Board finds that Dr. Zimmerman's whole body functional impairment rating for the injuries to the upper extremities is 19 percent. Averaging 19 percent with Dr. Lucas' 9 percent rating yields 14 percent, which the Appeals Board finds reasonably quantifies Ms. Miller's whole body functional impairment.

(6) Wesley Medical Center argues that the Judge erred by factoring in Dr. Zimmerman's functional impairment rating. In support of that argument, Wesley cites language used by the Board in Durham.¹

It is unfortunate when the parties elect to abandon the opinions of the treating physicians, instead presenting evidence from hired independent medical examiners. A treating physician would have the opportunity to evaluate an injured worker over a lengthy period of time and could develop an opinion based upon multiple examinations, tests, and a lengthy history of associating with claimant. Independent medical examiners are reduced to reviewing records of other physicians and generally have but one opportunity to examine and evaluate the claimant. As such, it becomes difficult for the trier of facts to place greater emphasis upon one medical opinion over another when independent medical examiners are all that are available.

The above statement recognizes that a treating physician may have an advantage in observing and noting a worker's signs and symptoms. But that advantage does not necessarily result in correctly interpreting and applying the AMA Guides.

Because every situation is unique, it would be improper, and the Board declines, to issue an edict that a treating physician's functional impairment rating should be given greater weight than the rating of another physician who expresses an equally credible opinion. Durham should not be interpreted to the contrary.

CONCLUSIONS OF LAW

(1) The permanent partial general disability should be increased to 14 percent.

(2) Because hers is an "unscheduled" injury, Ms. Miller's permanent partial general disability is determined by K.S.A. 44-510e. That statute provides:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in

¹ Durham v. Cessna Aircraft Company, Appeals Board Docket No. 196,986 (August 1996).

any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

(3) As indicated above, Ms. Miller at this time is claiming a permanent partial general disability based upon her functional impairment rating only. Therefore, Ms. Miller is awarded a 14 percent permanent partial general disability for the upper extremity injuries.

Docket No. 202,639

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

(1) The parties stipulated that Ms. Miller injured her low back on March 29, 1995, while working for Wesley Medical Center. The injury occurred while both Ms. Miller and a coworker were lifting a patient.

(2) The lifting incident caused additional permanent injury to Ms. Miller's back, which had been previously operated on.

(3) Based upon the opinions of Dr. Stephen T. Sparks and Dr. Philip R. Mills, the Judge found that Ms. Miller's whole body functional impairment due to the back had increased from 8 percent to 10 percent as a result of the March 1995 work-related accident. The Appeals Board affirms that finding.

(4) As Ms. Miller has returned to work for Wesley Medical Center, she is claiming permanent partial general disability benefits based upon the functional impairment rating only.

CONCLUSIONS OF LAW

(1) The award for the back injury should be affirmed.

(2) The statute controlling the definition of permanent partial general disability arising from the back injury is the same one as quoted above.

(3) The amount of the preexisting impairment must be deducted from the compensation awarded.² Subtracting the preexisting 8 percent impairment from the 10 percent impairment that now exists yields 2 percent upon which Ms. Miller's benefits for the back injury claim should be based.

² K.S.A. 44-501(c).

Docket No. 196,886

AWARD

WHEREFORE, the Appeals Board modifies the July 29, 1998 Award entered in Docket No. 196,886 to increase the permanent partial general disability from 11.5% to 14%.

Judith Miller is granted compensation from Wesley Medical Center for a September 30, 1994, accident and a resulting 14% permanent partial general disability. Based upon a \$264.39 average weekly wage, Ms. Miller is entitled to receive 70 weeks of temporary total disability and 50.4 weeks of permanent partial general disability benefits at \$176.27 per week for a total award of \$21,222.91. The award is ordered paid in one lump sum less any amounts previously paid.

Docket No. 202,639

AWARD

WHEREFORE, the Appeals Board affirms the award entered in Docket No. 202,639 for a 2% permanent partial general disability.

The Appeals Board adopts the remaining orders entered in either docket number to the extent that they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
P. Kelly Donley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director